

given by the testator to his son might be applied to its enlargement and that the same is now misapplied.

By the construction contended for, the interest of the trust estate, stated to be about three hundred dollars a year, must be accumulated and added to the principal, and either pass with the principal under the restricted testamentary power given by the will to the son of the testator, or descend and pass as part of the residue of the estate, as by the said will is provided. But, in my opinion, this is not the proper construction of the will. It is true, the testator confides to his wife, to whom he gave, during her life, a large portion of his estate, the care and maintenance of his son, and that upon her death, he charged upon his estate an annuity of six hundred dollars to be paid his son, half yearly, from the day of his mother's death, when his claim to a maintenance out of the devise to her would cease. But the will expressly provides that the said annuity, together with all other claims and property so as aforesaid, heretofore, or hereby, given to his son, should be held in trust by his executor, Captain Isaac Mayo, for the use and benefit of his son during his natural life, and no longer.

The claims and property, therefore, by the will gives to the son of the testator, the whole of which the will declares the testator had given him, in one way or other, during his life, was to be held by his executor in trust for the "use and benefit" of his son during his natural life, and yet it is maintained by the executor and trustee, that these words "use and benefit" mean no more than that the income and profits of the trust property shall accumulate, and with the principal, be subject to the limited power of devise given to the *cestui que use* by the will of the father. The position is, that the mother is, by the will, bound to take care of and maintain the son, and that, therefore, the profits of the estate given him by his father are not to be placed in his hands, or to be used or spent by him in any way. If this be so, if the son is to have no income of his own, but must during the lifetime of the mother look exclusively to her for all his supplies, how can it be said that he will enjoy that "ample and independent support" which his father said it was his intention to assure to him?